

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>PETE COFFEY, JR.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CIV-05-1086-M</b>
	)	
<b>CAPTAIN E. WILSON,</b>	)	
	)	
<b>Respondent</b>	)	

**REPORT AND RECOMMENDATION**

Petitioner, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2254 seeking a writ of habeas corpus. Pursuant to an order of United States District Judge Vicki Miles-LaGrange, the matter has been re-referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). In lieu of filing a response, Respondent filed a motion to dismiss, asserting therein that Petitioner failed to exhaust his state court remedies. In response to the motion Petitioner sought leave to amend to eliminate the unexhausted claim. By separate order entered this same date the undersigned has granted the motion to amend and accepted Petitioner's "Second Amended Petition" and the brief in support thereof. In light of the filing of the second amended petition, the undersigned recommends that the motion to dismiss be denied as moot, and that Respondent be ordered to respond to the second amended petition within twenty days of any order adopting this Report and Recommendation.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by April 24, 2006, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1. Petitioner is further advised that failure to make

timely objection to this Report and Recommendation waives any right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991). This Report and Recommendation does not dispose of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED this 3rd day of March, 2006.**

  
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DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE